

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

In re: Equifax, Inc. Customer  
Data Security Breach Litigation

This document relates to:

FINANCIAL INSTITUTION ACTIONS

MDL Docket No. 2800  
No. 1:17-md-2800-TWT

Chief Judge Thomas W. Thrash, Jr.

**APPLICATION OF THE “CUNA/ICBA GROUP” TO SERVE AS  
CO-LEAD COUNSEL, CO-LIAISON COUNSEL,  
AND PLAINTIFFS’ STEERING COMMITTEE  
FOR THE FINANCIAL INSTITUTION PLAINTIFFS**

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## I. INTRODUCTION

As this Court has recognized, this action, which involves potentially the most damaging data breach in history, will require an experienced, knowledgeable, and well-funded leadership team to steer it to a successful conclusion. The attorneys proposed for leadership positions as part of the “CUNA/ICBA Group” (identified below) have the experience necessary to prosecute this action. They have led and litigated every successful major data breach action on behalf of financial institutions, including two data breach actions in this District, *In re The Home Depot, Inc., Customer Data Sec. Breach Litig.*, MDL No. 2583 (N.D. Ga.) (“*Home Depot*”) and *In re Arby’s Restaurant Group, Inc. Data Sec. Litig.*, No. 17-mi-55555-AT (N.D. Ga.) (Totenberg, J.) (“*Arby’s*”), as well as *In re Target Corp. Customer Data Sec. Breach Litig.*, MDL No. 2522 (D. Minn.) (“*Target*”), *First Choice Fed. Credit Union v. The Wendy’s Co.*, No. 16-cv-00506 (W.D. Pa.) (“*Wendy’s*”), *Greater Chautauqua Fed. Credit Union v. Kmart Corp.*, No. 15-cv-02228 (N.D. Ill.) (“*Kmart*”), and *Bellwether Community Credit Union v. Chipotle Mexican Grill, Inc.*, No. 17-cv-1102 (D. Colo.) (“*Chipotle*”).

The CUNA/ICBA Group attorneys have been retained by the Credit Union National Association (“CUNA”), which, cumulatively, represents the vast majority of financial institutions in the putative class, and the Independent Community

Bankers of America (“ICBA”), which is comprised of more than 5,700 community banks of all sizes and charter types throughout the United States. No other movant can claim a similar breadth of attorney-client relationships with individual financial institutions and associations, which will enable the CUNA/ICBA Group’s attorneys to gather crucial information for the benefit of the putative class. Nor can any other movant credibly claim to possess the depth of data breach experience and to have achieved such substantial recoveries on behalf of financial institution plaintiffs. The CUNA/ICBA Group’s attorneys have proven track records successfully representing plaintiffs and class members in hundreds, if not thousands, of class actions and multidistrict proceedings, requiring the expenditure of considerable resources and close cooperation with co-counsel and opposing counsel alike. The CUNA/ICBA Group represents 63 of the 71 financial institution plaintiffs, whose members are located in all fifty states, and is the only group to represent credit unions and banks as well as national and statewide credit union and banking associations.

The CUNA/ICBA Group proposes that the Court approve a leadership structure similar to the one the Court approved in *Home Depot* (see *Home Depot*, ECF No. 62), consisting of co-lead counsel, an eight-member steering committee,

and co-liaison counsel, and that the Court appoint the following individuals to these positions:

**Co-Lead Counsel:**

- Joseph P. Guglielmo of Scott+Scott, Attorneys at Law, LLP; and
- Gary F. Lynch of Carlson Lynch Sweet Kilpela & Carpenter, LLP.

**Co-Liaison Counsel:**

- Craig A. Gillen of Gillen, Withers & Lake LLC; and
- MaryBeth V. Gibson of The Finley Firm, P.C.

**Plaintiffs' Steering Committee:**

- Arthur M. Murray of Murray Law Firm (co-chair);
- Stacey P. Slaughter of Robins Kaplan, LLP (co-chair);
- Charles Hale Van Horn of Berman Fink Van Horn, P.C.;
- Joseph Henry (Hank) Bates, III of Carney Bates & Pulliam PLLC;
- Bryan L. Bleichner of Chestnut Cambronne, PA;
- Karen H. Riebel of Lockridge Grindal Nauen P.L.L.P.;
- Karen S. Halbert of the Roberts Law Firm, PA; and
- Brian C. Gudmundson of Zimmerman Reed LLP.

As discussed below, the CUNA/ICBA Group is best able to represent the financial institution class's interests and easily satisfies the leadership criteria set forth in Case Management Order No. 1 (ECF No. 23), Federal Rule of Civil Procedure 23(g), and the Manual on Complex Litigation (Fourth). Therefore, the CUNA/ICBA Group respectfully requests that its application be granted.<sup>1</sup>

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<sup>1</sup> Reflecting the character and quality of the attorneys representing the financial institutions, the CUNA/ICBA Group was created after several attorneys – each of whom has filed independent actions on behalf of their own clients and has the skill, expertise, and experience to serve as co-lead counsel – agreed to step

## II. BACKGROUND

Pending before the Court are class actions filed by over seventy different credit unions, banks, and national and statewide credit union and banking associations. The CUNA/ICBA Group represents 63 of the 71 financial institution plaintiffs, which are representative of the breadth and scope of this litigation. Notably, the CUNA/ICBA Group is the only group to represent credit unions whose members are located in all fifty states. Beyond counting amongst its clients national associations such as CUNA and the ICBA, the CUNA/ICBA Group also represents 23 state credit union and banking associations and leagues that represent credit unions in Alabama, Arizona, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Illinois, Indiana, Kansas, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, Wisconsin, and Wyoming. As strong advocates for consumer protection, these associations and leagues bring a substantial depth of knowledge in the area of data privacy and protection that will prove invaluable in

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aside and either accept positions on the steering committee or not seek any leadership position. Through these collaborative efforts, the CUNA/ICBA Group received approval from all but one group of attorneys that filed actions on behalf of financial institutions.

developing the factual and legal claims, as well as potential remedies, in this action. In short, the CUNA/ICBA Group's nationwide client base is unparalleled in scope.

The CUNA/ICBA Group's attorneys also are representative of the attorneys who have appeared in the financial institution actions from around the country, and include a strong contingent of well-qualified counsel from Georgia with prior data breach experience before this Court. The individual attorneys in the group bring a variety of complementary talents needed to handle litigation of this type, such as prior appointment as lead or co-lead counsel in other multidistrict proceedings; familiarity with the Court, its rules, and its practices; long standing relationships with consumer counsel and defense counsel; familiarity with the unique damages theories associated with data breach actions; trial skills; extensive experience with electronic discovery and managing large document production repositories; legal research and writing skills pertaining to novel issues; and detailed knowledge of data breach case law stemming from their direct participation in many precedent-setting data breach actions.

These facts demonstrate that the CUNA/ICBA Group truly represents a consensus of the clients and attorneys involved in the financial institution actions and warrant the appointment of their proposed leadership structure.

### III. ARGUMENT

The Court, in Case Management Order No. 1, set forth the “main criteria” for leadership positions: “(1) willingness and ability to commit to a time-consuming process; (2) ability to work cooperatively with others; (3) professional experience in this type of litigation; and (4) access to sufficient resources to advance the litigation in a timely manner.” ECF No. 23 at 6. Other considerations in Fed. R. Civ. P. 23(g)(1)(A) include the work counsel has done in identifying or investigating potential claims in the action and counsel’s knowledge of the applicable law. *See also* Manual on Complex Litigation (Fourth) §21.271 (identifying additional factors). The CUNA/ICBA Group clearly meets these criteria.

#### **A. The CUNA/ICBA Group Has Committed, and Will Continue to Commit, Substantial Time and Resources to this Action**

All members of the CUNA/ICBA Group are willing and able to commit to what they expect to be a time-consuming and expensive process. Perhaps the best evidence of their commitment is the substantial time and resources that they collectively already have expended. Beyond being the attorneys who filed the first financial institution actions and retained 63 of the 71 financial institution plaintiffs (whose members are located in all fifty states), members of the CUNA/ICBA



Group have done significant work, meeting with dozens of financial institutions to research their damages and potential causes of action, working with investigators to identify and speak with former employees and other potential fact witnesses, issuing requests pursuant to the Freedom of Information Act, 5 U.S.C. §552, *et seq.*, and engaging in an extensive search of public records. Further, members of the CUNA/ICBA Group have spent considerable time and effort working together to meet and confer with defense counsel and counsel for the consumer plaintiffs to prepare and submit a preliminary report, and otherwise comply with the Court's directives. And achieving the compromise leadership slate reflected in this proposal also took considerable effort. The CUNA/ICBA Group's attorneys have continued to develop their clients' claims in anticipation of motion practice by working with potential liability and damages experts and are preparing for discovery by working to create a client questionnaire. Accordingly, the CUNA/ICBA Group satisfies the Court's first criterion.

**B. The CUNA/ICBA Group Has Worked, and Will Continue to Work, Cooperatively to Achieve Success in this Action**

Similarly, the firms in the CUNA/ICBA Group are committed to working cooperatively with one another, as well as with other firms representing financial institutions and consumers, a commitment which they already have demonstrated. Shortly after this Court issued Case Management Order No. 1, the firms in the

CUNA/ICBA Group organized calls among all counsel for both consumers and financial institutions to coordinate and prepare the materials necessary for the initial case management conference held on January 9, 2018. Proposed co-lead counsel, Joseph Guglielmo and Gary Lynch, as well as the proposed co-chairs of the steering committee, Arthur Murray and Stacey Slaughter, along with other CUNA/ICBA Group attorneys, worked with counsel for consumers and other financial institutions to obtain pertinent information necessary to draft and edit the preliminary report submitted on January 5, 2018.

The CUNA/ICBA Group's attorneys also conferred on behalf of all financial institution plaintiffs with all plaintiffs' counsel to draft and negotiate with defense counsel Proposed Case Management Order No. 2. Indeed, utilizing the prior experience gained from litigating *Home Depot*, Mr. Guglielmo and Mr. Lynch sought to ensure that the parties properly considered the implications of Local Rule 23.1(C)(2) and communications with absent class members. Thus, the CUNA/ICBA Group's attorneys already have demonstrated their commitment to working cooperatively with others.

Perhaps most significantly, evidence of the CUNA/ICBA Group's ability to work cooperatively is demonstrated by their ability to amicably come together and organize a leadership structure and team with a number of different firms who filed

independent actions. As is evident from the firm biographies attached as Exhibits 1-12 to the Declaration of Joseph P. Guglielmo (“Guglielmo Decl.”), the CUNA/ICBA Group includes many well-staffed and well-funded firms that have handled the largest data breach actions on behalf of financial institutions in the nation’s history. Each firm could have decided to contest the organization of plaintiffs’ counsel and seek sole leadership of this action. Instead, the firms chose to work cooperatively to create a consensus and support the proposed leadership structure. The CUNA/ICBA Group has worked, and will continue to work, with those attorneys who declined to join and support their proposed leadership structure so that all voices are considered. Thus, the Court’s second criterion is met.

**C. The CUNA/ICBA Group Has Substantial Experience Successfully Litigating Complex Actions, Including Data Breach Class Actions**

The CUNA/ICBA Group collectively has extensive and perhaps unparalleled success litigating complex class actions and multidistrict litigation, including data breach actions on behalf of financial institutions. This Court appointed nine of the twelve proposed attorneys to leadership positions representing the financial institutions in *Home Depot*, which recently settled for approximately \$27.25 million. The CUNA/ICBA Group’s attorneys have held

leadership roles in *Target*, an action where the court granted nationwide class certification and later accepted a settlement of over \$60 million for the financial institution class, and *Kmart*, an action arising out of the Kmart data breach brought on behalf of a class of financial institutions that settled for \$13.4 million. The CUNA/ICBA Group's attorneys are also currently lead counsel and executive committee members in *Arby's*, a data breach action before Judge Totenberg brought on behalf of financial institutions, and *Wendy's*, a data breach action brought on behalf of financial institutions where the motion to dismiss was denied and discovery is well underway. As detailed below, the CUNA/ICBA Group's attorneys bring invaluable experience steering the developing area of data breach law, as well as a practical understanding of the concerns unique to financial institutions and their relationship with Equifax, including the information technology systems at issue here.

The experience and qualifications of the firms and attorneys who seek appointment as part of the CUNA/ICBA Group are set forth below.

### **1. The Proposed Co-Lead Counsel**

#### **Joseph P. Guglielmo of Scott+Scott, Attorneys at Law, LLP**

Joseph P. Guglielmo of Scott+Scott, Attorneys at Law, LLP ("Scott+Scott") has been practicing for over twenty years and has been appointed to leadership

positions in numerous multidistrict class actions, achieving significant results for his clients and the classes he represents. *See* Guglielmo Decl., Ex. 1. Mr. Guglielmo is a partner of Scott+Scott, a national firm with approximately 60 attorneys located in New York, Connecticut, California, Ohio, and London, England, who are involved in complex and class action litigation, representing individuals, businesses, and public and private pension funds. Mr. Guglielmo co-chairs Scott+Scott's consumer litigation department.

Mr. Guglielmo represents over forty credit unions, banks, and associations, including CUNA and numerous state and regional credit union associations and leagues. Mr. Guglielmo currently is co-lead counsel for the financial institution class in *Home Depot*, where the motion to dismiss was denied and a \$27.25 million settlement was obtained on behalf of financial institutions nationwide. Mr. Guglielmo previously served as a member of plaintiffs' steering committee in *Target*, where a nationwide class was certified and a settlement of over \$60 million was achieved, and was lead counsel in *Winsouth Credit Union v. Mapco Express, Inc.*, No. 3:14-cv-01573 (M.D. Tenn.), where he was the principle negotiator of the largest dollar-per-payment-card recovery in a data breach action brought on behalf of a class of financial institutions. Mr. Guglielmo has further built on these successes and is currently representing financial institutions in *Chipotle* (co-lead

counsel) and *Veridian Credit Union v. Eddie Bauer LLC*, No. 17-00356 (W.D. Wa.). In addition to his litigation successes, Mr. Guglielmo frequently lectures on electronic discovery and is a member of the Steering Committee of Working Group 1 of the Sedona Conference®.

**Gary F. Lynch of Carlson Lynch Sweet Kilpela & Carpenter, LLP**

Gary F. Lynch of Carlson Lynch Sweet Kilpela & Carpenter, LLP (“Carlson Lynch”) has been appointed to leadership positions in some of the largest and most complex data breach actions of the past several years. *See* Guglielmo Decl., Ex. 2. His firm, Carlson Lynch, is a nationally-known, 16-attorney, complex litigation and class action firm with offices in Pittsburgh, PA and San Diego, CA.

Mr. Lynch represents over forty banks and credit unions. He has been retained in this case by the ICBA, and through the ICBA, represents the interests of over 5,700 community banks throughout the nation, giving Mr. Lynch unique access into the banking industry for purposes of prosecuting this case, including securing additional class representatives as necessary. Mr. Lynch is serving as co-lead counsel for the financial institution plaintiffs in *Home Depot* and *Wendy’s*. He was appointed to the five-member overall executive committee responsible for both the consumer and financial institution plaintiff tracks in *Target* and serves as chair of the executive committee for the financial institution plaintiffs in *Arby’s*.

Mr. Lynch also serves or has served on the court-appointed executive committees in several other data breach/privacy cases, including: *Kmart, Chipotle, In re Vizio, Inc. Consumer Privacy Litig.*, MDL No. 2693 (C.D. Cal.); *In re: Cmty. Health Sys., Inc. Customer Data Sec. Breach Litig.*, MDL No. 2595 (N.D. Ala.); and *In re: Ashley Madison Customer Data Sec. Breach Litig.*, MDL No. 2669 (E.D. Mo.). Mr. Lynch served as Counsel of Record for the Respondent in the United States Supreme Court decision in *Genesis HealthCare Corp. v. Symczyk*, 569 U.S. 66 (2013), and is lead counsel on behalf of the Petitioners/Appellants in *Dittman v. UPMC*, No. 43 WAP 2017 (Pa.), a data breach case selected to be heard by the Pennsylvania Supreme Court to address the parameters of legal duty and the economic loss doctrine in the context of an employer data breach.

## **2. The Proposed Co-Liaison Counsel**

### **Craig A. Gillen, Gillen, Withers & Lake LLC**

For 40 years Craig Gillen has successfully tried cases in federal courts throughout the country, first as an Assistant United States Attorney in the Northern District of Georgia, then as the Deputy Independent Counsel for Iran/Contra, and for the past 25 years, while in the private practice of law. *See* Guglielmo Decl., Ex. 3. As an Assistant United States Attorney, Mr. Gillen received several commendations from the Department of Justice, including for his successful

prosecution of United States Congressman Patrick Swindall, *United States v. Swindall*, Case # 1:1988cr00477 (N.D. Ga. 1988). In January 1990, following the *Swindall* prosecution, Mr. Gillen joined the Office of the Independent Counsel for Iran/Contra in Washington, D.C., where he served as the Deputy Independent Counsel and supervised all of the continuing investigations. Mr. Gillen was lead trial counsel in the multi-week trial in *United States v. Claire George*, the former CIA Chief of Worldwide Operations.

Mr. Gillen also served as counsel in the Home Depot data breach litigation, *In re: The Home Depot, Inc., Customer Data Security Breach Litigation*, Case No. 1:14-md-02583-TWT (N.D. Ga. 2014). Mr. Gillen continues to enjoy success in complex civil and criminal litigation. As lead counsel, he obtained the only acquittal of an executive in the National Century Financial Enterprises prosecution, one of the largest private fraud prosecutions in U.S. history, in *United States v. Poulsen*, Case No. 2:2006cr00129 (S.D. Ohio 2006). And, of late, Mr. Gillen has obtained the reversal of the convictions of a county CEO, *Ellis v. State of Georgia*, 300 Ga. 371, 794 S.E.2d 601 (2016); and the dismissal of all charges against the former CEO of a county electric cooperative, *State of Georgia v. Brown*, Case No. A18A0389 (Ga. App. 2017).



**MaryBeth V. Gibson of The Finley Firm, P.C.**

MaryBeth V. Gibson specializes in complex civil litigation, including business litigation and data breach litigation. *See* Guglielmo Decl., Ex. 4. Ms. Gibson was appointed to the plaintiffs' steering committee representing financial institutions in *Home Depot*, where she also served as co-chair of the third-party discovery committee. Ms. Gibson also handled consumer fraud cases involving insurance companies, corporate fraud cases, and prior to that mass torts (representing multiple clients in *In re: Vioxx Prods. Liab. Litig.*, MDL No. 1657 (E.D. La.) and in *In re Ethicon, Inc., Pelvic Repair Sys. Prods. Liab. Litig.*, MDL No. 2327 (S.D.W.V.), participating in discovery committees in *In re DePuy Orthopaedics, Inc., ASR Hip Implant Prods. Liab. Litig.*, MDL No. 2197 (N.D. Ohio), and in *In re DePuy Orthopaedics, Inc., Pinnacle Hip Implant Prods. Liab. Litig.*, MDL No. 2244 (N.D. Tex.)), and catastrophic injury claims.

Ms. Gibson was also retained to act as Special-Counsel to law firms throughout the United States, assisting in complex civil litigation filed in federal and superior courts in the State of Georgia. Ms. Gibson was admitted to practice in Georgia in 1990 and has spent her entire career in Atlanta practicing in State and Federal Courts.

### 3. The Proposed Steering Committee

The proposed steering committee is comprised of eight firms, each of which could have easily sought appointment as co-lead counsel in its own right, but has agreed to work closely with the proposed co-lead counsel to help prosecute this action. The proposed steering committee includes the following:

#### **Arthur M. Murray of Murray Law Firm (Co-Chair)**

For over 40 years, the nationally recognized attorneys of Murray Law Firm (“Murray Law”) have been actively involved in complex litigation throughout Louisiana and the United States. *See* Guglielmo Decl., Ex. 5. Murray Law has successfully represented plaintiffs in class actions and mass torts cases covering a wide range of areas, including personal injury, property damage, insurance underpayments, and unfair trade practices. Mr. Murray has received an AV Preeminent® rating from Martindale-Hubbell and has been included in the Rising Star (Class Action) category of *Louisiana Super Lawyers* since 2014. He has over 16 years of litigation experience as trial counsel in mass actions and class actions throughout the United States and has litigated at all district and appellate levels.

Mr. Murray has a great deal of experience handling complex litigation in federal court. In fact, he has represented financial institutions in data breach litigation, such as the present case, by serving as lead co-counsel in *Kmart* and

*Chipotle*, and as a member of the plaintiffs' steering committee in *Home Depot*. Mr. Murray has also been appointed to leadership roles in other cases, including co-chair of the plaintiffs' steering committee in *In re NFL Sunday Ticket Antitrust Litig.*, MDL No. 02668 (C.D. Cal.), and as a member of the plaintiffs' steering committee in *In re Zofran (Ondansetron) Litig.*, MDL No. 2657 (D. Mass.).

**Stacey P. Slaughter of Robins Kaplan, LLP (Co-Chair)**

Partner Stacey Slaughter, a recognized *Super Lawyer* with nearly twenty years' experience, represents Summit Credit Union, the first financial institution to file against Equifax, as well as several other credit unions in this litigation. *See* Guglielmo Decl., Ex. 6.

Ms. Slaughter's particular expertise in financial industry disputes, multidistrict and complex litigation, and the Firm's data breach and privacy cases makes her uniquely qualified for a leadership role. As lead counsel, she represented plaintiff Federal Home Loan Bank of Pittsburgh in complex litigation regarding residential mortgage-backed securities and recovered more than \$100 million for the member banks. No. GD 09-016892 (Pa. Ct. Com. Pl.). She was co-lead counsel for investors in *Dahl v. Bain Capital Partners, LLC*, No. 1:07-cv-12388-EFH (D. Mass.), achieving nearly \$600 million against the country's largest private equity firms. *See also* *Whitaker v. Health Net*, No. 11-cv-0910-KJM (E.D.

Cal. 2011) (breach); *In re Google Buzz Privacy Litig.*, No. 10-cv-00672-JW (N.D. Cal. 2011) (privacy); *Walters v. Kimpton*, No. 16-cv-05387-VC (N.D. Cal 2016) (breach). Additionally, she has lectured on and been quoted in *American Banker* and *Credit Union Times*, among other periodicals, about the financial institution case against Equifax.

**Charles Hale Van Horn of Berman Fink Van Horn, P.C.**

Charles Hale Van Horn is a shareholder in the Atlanta, Georgia firm Berman Fink Van Horn, P.C. where his practice involves business and commercial litigation with an emphasis on litigation for financial institutions on a wide variety of issues. *See* Guglielmo Decl., Ex. 7. Mr. Van Horn is AV rated by Martindale Hubbell.

Mr. Van Horn's representation of financial institutions includes data breach and cyber-related issues, as well as enforcement litigation, lender liability, statutory compliance issues, and foreclosure claims. In addition, he handles a significant number of cases involving fraudulent conveyance claims and has tried many such claims to jury verdict. Mr. Van Horn is counsel for financial institutions in *Home Depot*, where he serves on the plaintiffs' coordination committee, which is responsible for all class communication and discovery. Mr.

Van Horn serves on the plaintiffs' executive committee in *Arby's* and is counsel for the plaintiff financial institutions in *Wendy's*.

Mr. Van Horn was formerly an adjunct professor teaching legal writing and advocacy at Emory University School of Law. Mr. Van Horn lectures frequently, including conducting numerous seminars on lender litigation matters, foreclosure issues, and fraudulent conveyance claims. For example, he presented in 2015 to the Georgia Community Bankers Association on lender enforcement and liability issues. In 2016, he co-presented at a seminar focused on data security for business owners. He is also a frequent lecturer for the National Business Institute on trial advocacy, evidence, and business litigation issues.

**Joseph Henry (Hank) Bates, III of Carney Bates & Pulliam, PLLC**

Joseph Henry (Hank) Bates and his firm, Carney Bates and Pulliam, PLLC, are at the forefront of data security and data privacy litigation nationwide. *See* Guglielmo Decl., Ex. 8. Among other data breach cases, Mr. Bates has represented financial institutions as a member of the plaintiffs' steering committee in *Home Depot*, and as counsel for lead financial institution plaintiff Umpqua Bank in *Target*, and also represented a class of Sony employees as co-counsel in *Levine v. Sony Pictures Entertainment, Inc.*, No. 2:14-cv-09687-RGK-SH (C.D. Cal.). Mr. Bates served as court-appointed co-lead counsel in three recently resolved, high-

profile class action settlements protecting data privacy: *Ebarle v. LifeLock, Inc.*, No. 3:15-cv-00258 (N.D. Cal.) (\$81 million settlement of claims that LifeLock falsely represented the scope and effectiveness of its identity protection services); *Matera v. Google, Inc.*, No. 5:15-cv-04062-LHK (N.D. Cal.) (requiring Google to stop using content derived from email transmissions for user profiling and targeted advertising); and *Campbell v. Facebook, Inc.*, No. 4:13-cv-05996-PJH (N.D. Cal.) (securing disclosures and limitations on Facebook’s interception and use of private message content). Among many currently pending data privacy actions, Mr. Bates serves as co-lead counsel in three related actions challenging twenty-two defendants’ tracking and profiling of tens of millions of children while they play gaming apps: *Rushing v. The Walt Disney Co.*, No. 3:17-cv-04419-JD (N.D. Cal.); *Rushing v. Viacom*, No. 3:17-cv-04492-JD (N.D. Cal.); and *McDonald v. Killoo APS*, No. 3:17-cv-04344-JD (N.D. Cal.).

### **Bryan L. Bleichner of Chestnut Cambronne, PA**

For over 50 years, Chestnut Cambronne PA (“Chestnut Cambronne”), located in Minneapolis, Minnesota, has been representing clients in class action litigation both in Minnesota and at a national level. *See* Guglielmo Decl., Ex. 9. Since its inception, Chestnut Cambronne has been engaged in complex litigation throughout the country and has successfully prosecuted and defended class

litigation addressing substantive legal questions in the fields of data security breaches, securities, ERISA, banking, antitrust, and consumer protection law.

Bryan L. Bleichner is a partner at Chestnut Cambronne and has served in a leadership capacity in *Target*, where Chestnut Cambronne served as coordinating lead counsel and co-lead counsel for the financial institution plaintiffs. Mr. Bleichner was also appointed to the executive committee for the financial institution plaintiffs in *Arby's*; serves as executive committee chair in *Chipotle*; was appointed to the executive committee in *Wendy's*; served on the financial institution plaintiffs' steering committee and co-chaired defendant's discovery in *Home Depot*; serves as plaintiffs' counsel in *In re: Anthem, Inc., Customer Data Sec. Breach Litig.*, MDL No. 2617 (N.D. Cal); and is a member of the plaintiffs' executive committee in *Christian v. National Hockey League*, MDL No. 2551 (D. Minn.).

**Karen H. Riebel of Lockridge Grindal Nauen P.L.L.P.**

Karen H. Riebel, a partner at Lockridge Grindal Nauen, P.L.L.P., has been appointed to leadership positions in some of the largest and most complex data breach cases of the past several years. *See* Guglielmo Decl., Ex. 10. She serves as co-lead counsel in *Arby's*, *Kmart*, and *In re Cmty. Health Sys., Inc., Customer Data Sec. Breach Litig.*, MDL No. 2595 (N.D. Ala.); served as liaison counsel for

the financial institution plaintiffs and on plaintiffs' leadership committee in *Target*; serves on the financial institution plaintiffs' steering committees in *Home Depot* and *Wendy's*; serves on the four-person executive committee in *In re Yahoo! Inc. Customer Data Sec. Breach Litig.*, No. 16-02752 (N.D. Cal.); and serves as plaintiffs' counsel in *In re: Anthem, Inc., Customer Data Sec. Breach Litig.*, MDL No. 2617 (N.D. Cal), *In re: Supervalu, Inc. Customer Data Sec. Breach Litig.*, MDL No. 2586 (D. Minn.), *Storm v. Paytime, Inc.*, No. 1:14-cv-01138 (M.D. Pa.); and *Dittman v. UPMC*, No. GD-14-003285 (Pa. Ct. Com. Pl.).

#### **Karen S. Halbert of Roberts Law Firm**

Roberts Law Firm, P.A. ("Roberts Law Firm") is a Certified Minority Business Enterprise, based in Little Rock, Arkansas. *See* Guglielmo Decl., Ex. 11. The firm has served as lead counsel in individual and class action cases, and has successfully assisted recovery of hundreds of millions of dollars for its clients. Karen Halbert is a partner at Roberts Law Firm. Ms. Halbert's practice consists of a wide variety of complex business litigation, including antitrust and data breach class actions.

Ms. Halbert has over 16 years of experience in electronic discovery. Ms. Halbert managed the document collection, review, and production process for the financial institution plaintiffs in *Target*. In 2016, Ms. Halbert was recognized by



Best Lawyers in America and Best Lawyers in Arkansas in the fields of electronic discovery and information management law. Ms. Halbert has a Bachelor of Science in Computer Science and has 18 years of experience in software development. Specifically, she served as vice president of a software company that developed and licensed point-of-sale software and debit and credit card management software. This experience gives Ms. Halbert a unique understanding of the issues involved in data breach cases.

**Brian C. Gudmundson of Zimmerman Reed LLP**

Brian C. Gudmundson has been instrumental in helping to lead high-profile class action lawsuits that have changed industries and resulted in significant awards. *See* Guglielmo Decl., Ex. 12. This includes the landmark data breach class action *Target*, where Mr. Gudmundson served as a member of the lead counsel team for financial institutions, which achieved the first-ever certified class in a data breach action and resulted in a substantial financial settlement for payment card issuers. Mr. Gudmundson is also currently court-appointed co-lead counsel for financial institutions in *Arby's* and a member of the plaintiffs' steering committees on behalf of financial institutions in *Home Depot* and *Wendy's*. Mr. Gudmundson also serves on the plaintiffs' steering committee in *In Re: Vizio, Inc., Consumer Privacy Litig.*, MDL No. 2693 (C.D. Cal.) (ongoing data privacy

action), among several other matters.

The CUNA/ICBA Group's extensive and successful background in litigating complex data breach actions, as well as the ability of its members to work cooperatively in this case, will benefit plaintiffs and the putative class in the financial institution actions. Accordingly, this Court's third criterion and the factors identified in Rule 23(g) weigh heavily in favor of appointing the CUNA/ICBA Group to lead the financial institution actions.

**D. The CUNA/ICBA Group Has Sufficient Resources to Advance this Action in a Timely Manner**

As its members repeatedly have demonstrated by their successes in the actions described above and in innumerable other actions, the CUNA/ICBA Group has more than sufficient resources to advance this action in a timely manner. Additionally these firms are adequately capitalized and can expend the resources necessary to litigate this action to a successful resolution. After appointment, co-lead counsel intend to establish a litigation fund to pay the joint expenses needed to finance the case to which they and the other group members will contribute. Additional funds will be contributed as necessary. This action will not suffer for lack of resources. Accordingly, the Court's fourth and final criterion is met.

#### **IV. PROPOSAL FOR MANAGING TIME AND EXPENSES**

Drawing off their prior experience in *Home Depot*, along with their desire to litigate this action in the most efficient and cost-effective manner, the CUNA/ICBA Group will normalize hourly rates consistent with rates generally charged by attorneys in this District and establish a process whereby counsel in all the financial institution actions report their time and expenses on a monthly basis, which will be reviewed and subject to audit by proposed co-lead counsel and designated members of the proposed steering committee. Using these monthly reports, co-lead counsel will review the submissions of each firm to ensure that no work is duplicative and that the work designated to specific firms is performed timely and efficiently. Co-lead counsel will submit such reports to the Court on a quarterly basis.

#### **V. CONCLUSION**

For the foregoing reasons, the CUNA/ICBA Group hereby requests that its application for appointment to leadership positions be granted.

Dated: February 2, 2018

Respectfully submitted,

/s Craig A. Gillen

Craig A. Gillen

Ga. Bar No.

Anthony C. Lake

Ga. Bar No. 431149

**GILLEN WITHERS & LAKE, LLC**

3490 Piedmont Road, N.E.  
One Securities Centre, Suite 1050  
Atlanta, GA 30305  
Tel.: 404-842-9700  
Fax: 404-842-9750  
cgillen@gwllawfirm.com  
aclake@gwllawfirm.com

Thomas A. Withers  
Ga. Bar No. 772250  
**GILLEN WITHERS & LAKE, LLC**  
8 E. Liberty Street  
Savannah, GA 31401  
Tel.: 912-447-8400  
Fax: 912-629-6347  
twithers@gwllawfirm.com

MaryBeth V. Gibson  
**THE FINLEY FIRM, P.C.**  
3535 Piedmont Road  
Building 14, Suite 230  
Atlanta, GA 30305  
Tel.: 404-320-9979  
Fax: 404-320-9978  
mgibson@thefinleyfirm.com

*Proposed Co-Liaison Counsel for the  
Financial Institution Plaintiff Class*

Joseph P. Guglielmo  
Erin Green Comite  
Carey Alexander  
Margaret B. Ferron  
**SCOTT+SCOTT, ATTORNEYS AT  
LAW, LLP**  
230 Park Avenue, 17th Floor  
New York, NY 10169  
Tel.: 212-223-6444

Fax: 212-223-6334  
jguglielmo@scott-scott.com  
ecomite@scott-scott.com  
calexander@scott-scott.com  
mferron@scott-scott.com

Gary F. Lynch  
Jamisen A. Etzel  
Kevin Tucker  
**CARLSON LYNCH SWEET KILPELA  
& CARPENTER, LLP**  
1133 Penn Avenue, 5th Floor  
Pittsburgh, Pennsylvania 15222  
Tel.: 412-322-9243  
Fax: 412-231-0246  
glynch@carlsonlynch.com  
jetzel@carlsonlynch.com  
ktucker@carlsonlynch.com

*Proposed Co-Lead Counsel for the  
Financial Institution Plaintiff Class*

Arthur M. Murray  
Stephen B. Murray, Sr.  
Caroline W. Thomas  
**MURRAY LAW FIRM**  
650 Poydras Street, Suite 2150  
New Orleans, LA 70130  
Tel.: 504-525-8100  
Fax: 504-584-5249  
amurray@murray-lawfirm.com  
smurray@murray-lawfirm.com  
cthomas@murray-lawfirm.com

Stacey P. Slaughter  
Michael Ram  
**ROBINS KAPLAN LLP**

800 LaSalle Avenue Suite 2800  
Minneapolis, MN 612-349-8500  
Tel.: 612-349-8500  
Fax: 612-339-4181  
sslaughter@robinskaplan.com  
mram@robinskaplan.com

*Proposed Co-Chairs of Plaintiffs' Steering  
Committee for the Financial Institution  
Plaintiff Class*

Charles H. Van Horn  
**BERMAN FINK VANHORN P.C.**  
3475 Piedmont Road, Suite 1100  
Atlanta, GA 30305  
Tel.: 404-261-7711  
Fax: 404-233-1943  
cvanhorn@bfvlaw.com

Allen Carney  
Joseph Henry Bates  
**CARNEY BATES & PULLIAM, PLLC**  
519 W. 7th Street  
Little Rock, AR 72201  
Tel.: 501-312-8500  
Fax: 501-312-8505  
acarney@cbplaw.com  
hbates@cbplaw.com

Bryan L. Bleichner  
**CHESTNUT CAMBRONNE PA**  
17 Washington Avenue North  
Suite 300  
Minneapolis, MN 55401  
Tel.: 612-339-7300  
Fax: 612-336-2940  
bbleichner@chestnutcambronne.com

Karen Hanson Riebel  
Kate M. Baxter-Kauf  
**LOCKRIDGE GRINDAL NAUEN  
P.L.L.P.**

100 Washington Ave. S., Suite 2200  
Minneapolis, MN 55401  
Tel.: 612-339-6900  
Fax: 612-339-0981  
khriebel@locklaw.com  
kmbaxter-kauf@locklaw.com

Karen S. Halbert  
Michael L. Roberts  
Jana K. Law  
**ROBERTS LAW FIRM, PA**

20 Rahling Circle  
P.O. Box 241790  
Little Rock, AR 72223  
Tel.: 501-821-5575  
Fax: 501-821-4474  
karenhalbert@robertslawfirm.us  
mikeroberts@robertslawfirm.us  
janalaw@robertslawfirm.us

Brian C. Gudmundson  
**ZIMMERMAN REED LLP**  
1100 IDS Center, 80 South 8th Street  
Minneapolis, MN 55402  
Tel.: 612-341-0400  
Fax: 612-341-0844  
brian.gudmundson@zimmreed.com

*Proposed Members of Plaintiffs' Steering  
Committee for the Financial Institution  
Plaintiff Class*

Richard L. Coffman  
**THE COFFMAN LAW FIRM**

First City Building  
505 Orleans St., Fifth Floor  
Beaumont, TX 77701  
Tel.: 409-833-7700  
Fax: 866-835-8250  
Email: rcoffman@coffmanlawfirm.com

Reginald L. Snyder  
**DYE SNYDER, LLP**  
260 Peachtree St. NW, Suite 502  
Atlanta, GA 30303  
Tel.: 678-974-8360  
Fax: 404-393-3872  
Email: rsnyder@dyesnyder.com

Mary C. Turke  
Samuel J. Strauss  
**TURKE & STRAUSS, LLP**  
Suite 201  
613 Williamson Street  
Madison, WI 53703  
Tel.: 608-237-1775  
Fax: 608-509-4423  
mary@turkestrauss.com  
sam@turkestrauss.com

David A. Reed  
**REED & JOLLY, PLLC**  
3711 Millpond Court  
Fairfax, VA 22033  
Tel.: 703-675-9578  
David@reedandjolly.com

Charles Barrett  
**NEAL & HARWELL, PLC**  
1201 Demonbreun Suite 1000  
Nashville, TN 37203  
Tel.: 615-238-3647



Fax: 615-726-0573  
cbarrett@nealharwell.com

Robert C. Khayat, Jr.  
**THE KHAYAT LAW FIRM**  
Georgia Bar No. 416981  
75 Fourteenth Street, N.E.  
Suite 2750  
Atlanta, Georgia 30309  
Tel.: 404-978-2750  
Fax: 404-978-2901  
rkhayat@khayatlawfirm.com

David M. Cohen  
**COMPLEX LAW GROUP, LLC**  
Ga. Bar No. 173503  
40 Powder Springs Street  
Marietta, GA 30064  
Tel.: 770-200-3100  
Fax: 770-200-3101  
dcohen@complexlaw.com

*Additional Counsel for Plaintiffs*

*All Counsel for Plaintiffs ASI Federal Credit Union, Alcoa Community Federal Credit Union, Army Aviation Center Federal Credit Union, Association of Vermont Credit Unions, Atlantic City Federal Credit Union, Aventa Credit Union, Bank of Louisiana, Bank of Ripley, Bank of Zachary, California Credit Union League, Carolinas Credit Union League, Consumers Cooperative Credit Union, Cooperative Credit Union Association, Credit Union League of Connecticut, Credit Union National Association, D.L. Evans Bank, Durand State Bank, Elements Financial Federal Credit*

*Union, Embark Credit Union, First Choice Federal Credit Union, First Education Federal Credit Union, First Financial Credit Union, First Nebraska Credit Union, Gerber Federal Credit Union, Greater Cincinnati Credit Union, Halliburton Employees' Federal Credit Union, Heartland Credit Union Association, Heritage Federal Credit Union, Illinois Credit Union League, Independent Community Bankers of America, Indiana Credit Union League, Jonah Bank of Wyoming, League of Southeastern Credit Unions & Affiliates, ICUL Service Corporation d/b/a LSC (Credit Union), MD/DC Credit Union Association, Michigan Credit Union League, Minnesota Credit Union Network, Mississippi Credit Union League, Montana Credit Union League, Mountain West Credit Union Association, Nebraska Credit Union League, Nevada Credit Union League, New York Credit Union Association, NuMark Credit Union, Ohio Credit Union League, Oteen VA Federal Credit Union, Pennsylvania Credit Union Association, Putnam Bank, Ravalli County Federal Credit Union, SELCO Community Credit Union, Services Credit Union, Seven Seventeen Credit Union, Sky Federal Credit Union, State Employees Federal Credit Union, Summit Credit Union, Suncoast Credit Union, Texas First Bank, The First State Bank, UmassFive Federal Credit Union, Virginia Credit Union League, Washington Gas Light Federal Credit Union, Wisconsin Credit Union League, and Wright-Patt Credit Union*

### **CERTIFICATION**

The Undersigned hereby certifies, pursuant to Local Civil Rule 7.1D, that the foregoing document has been prepared with one of the font and point selections (Times New Roman, 14 point) approved by the Court in Local Civil Rule 5.1C.

This 2nd day of February, 2018.

/s Craig A. Gillen

Craig A. Gillen

Ga. Bar No.

**GILLEN WITHERS & LAKE, LLC**

3490 Piedmont Road, N.E.

One Securities Centre, Suite 1050

Atlanta, GA 30305

Tel.: 404-842-9700

Fax: 404-842-9750

cgillen@gwllawfirm.com

### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that, on this 2nd day of February, 2018, the undersigned electronically filed the foregoing filing using the CM/ECF system, which will automatically send email notification of such filing to all attorneys of record in this case.

/s Craig A. Gillen

Craig A. Gillen

Ga. Bar No.

**GILLEN WITHERS & LAKE, LLC**

3490 Piedmont Road, N.E.

One Securities Centre, Suite 1050

Atlanta, GA 30305

Tel.: 404-842-9700

Fax: 404-842-9750

cgillen@gwllawfirm.com